IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1096 OF 2006

WITH

WRIT PETITION NO.1097 OF 2006

Bhausaheb K. Shinde .. Petitioner
Versus
The Nashik Merchants Coop.
Bank Ltd. & Ors. .. Respondents.

Mr.R.S.Ghadge i/b. Mrs.A.S.Desai for petitioner
Mr.P.N.Joshi for respondent No.1
Mr.R.M.Patne, A.G.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 23rd February 2006.

P.C.

. These petitions under Articles 226 and 227 of the Constitution of India are directed against the action of Special Recovery Officer, respondent No.3 issuing an auction notice to auction and dispose of properties of petitioners

for recovering sums mentioned in the recovery certificate issued in favour of first respondent Bank.

2. These matters are mentioned because the auction is scheduled today. The auction notice states that the petitioners have not paid the amount despite several reminders and notices. Therefoe, the extreme action of auctioning the properties has been resorted to by the Special Recovery Officer.

3. Mr.Ghadge, appearing for petitioner states that the petitioner has preferred revisional application before Divisional Joint Registrar to challenge recovery certificate and the same is pending.

4. Mr.Joshi appearing for first respondent bank points out that the dues which are mentioned in the auction notices are outstanding and the

petitioner has not paid any sums despite recovery certificate having been issued as early as in December 2003.

5. In my view, there are alternate and equally efficacious remedies available to the petitioner, firstly to impugn the recovery certificate and also the coercive action which is initiated to recover amounts thereunder. All submissions on merits can be made during the course of such proceedings. Learned Counsel for petitioner states that the auction be postponed to enable the petitioner to avail of these remedies.

6. In my view, taking into account all facts and circumstances, interest of justice would be served if the Special Recovery Officer is directed not to finalise the sale/ auction proceedings for a period of six weeks from today on a condition that that within this time,

petitioner shall deposit 50% of the dues under the recovery certificate/ auction notice with the respondent bank. Needless to state that if the amount is not deposited within the period stipulated, as submitted above, it will be open for the recovery officer to take such steps as are permissible in law. Petition dismissed, subject to above.

(S.C.DHARMADHIKARI, J)